

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 15957
[REDACTED])	
)	DECISION
Petitioner.)	
_____)	

On August 17, 2001, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (petitioner), proposing income tax, penalty, and interest for the taxable year 1996 in the total amount of \$6,340. The petitioner filed a timely appeal and petition for redetermination; however, the petitioner did not respond to the Tax Commission's hearing rights letter and has provided nothing further for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The Income Tax Audit Bureau (Bureau) received information showing the petitioner sold Idaho real property in 1996. The Bureau researched the Tax Commission's records and found that the petitioner did not file an Idaho individual income tax return for the taxable year 1996. Under Idaho law, income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from the "ownership or disposition of any interest in real or tangible personal property located in Idaho." Idaho Code section 63-3026A(3)(ii).

The Bureau sent the petitioner letters asking the petitioner about the sale of Idaho property and his requirement to file an Idaho income tax return. On July 25, 2001, the Tax Commission received a 1996 Idaho income tax return from the petitioner. The 1996 Idaho income tax return was signed and dated by both the petitioner and his wife. Additionally, the married filing joint return box was checked and the total number of exemptions claimed on the return was four (the petitioner,

his wife, and their two children).¹ On the federal return attached to the petitioner's Idaho return, the petitioner reported a \$418,659 net loss from real estate management and a \$91,819 net gain from real estate development. The petitioner on his Idaho return netted the real estate development net profit against the real estate management net loss and reported as Idaho source a \$326,840 net loss from business activity. As a real estate developer, the petitioner reported the gain on the sale of Idaho property as ordinary income on the petitioner's federal Schedule C. The Bureau reviewed the petitioner's 1996 Idaho return and requested that the petitioner provide the Tax Commission with additional information regarding the in-state and out-of-state activities of the two sole proprietorship's being operated by the petitioner. Since the petitioner did not provide the information requested by the Bureau, on August 17, 2001, the Bureau issued its Notice of Deficiency Determination. In the Notice of Deficiency Determination, the Bureau disallowed the petitioner's treatment of the \$418,659 net loss from the real estate management activity as Idaho source.

The petitioner protested the Bureau's determination stating that the Notice of Deficiency Determination is incorrect because the Bureau did not give the petitioner credit for his cost of unit that he sold and stated that "if we would have to back out the one unit sold and build in Idaho and not charge it any other expenses for doing business, the profit on the one unit would be about \$9,100. We try to have a 10% profit on the unit that we build and sell."

¹ When the Notice of Deficiency Determination was issued, the Bureau only listed the husbands name in the Notice of Deficiency Determination even though the Bureau used income and expense items reported in the return filed by the petitioner. The Bureau also used married filing joint and four exemptions in calculating the petitioner's Idaho taxable income.

On August 6, 2002, the Tax Commission sent the petitioner's representative a letter identifying the petitioner's appeals rights for having the Notice of Deficiency Determination redetermined and seeking clarification regarding some of the statements made by the petitioner's representative in the petition for redetermination. The Tax Commission did not receive a response to its August 6, 2002, letter. Therefore, the Tax Commission decided the matter based upon the information available.

The Bureau used the net profit from the petitioner's real estate development business as the petitioner's adjusted gross income for Idaho. The Bureau did not include any of the net loss from the petitioner's real estate management business as Idaho source. The petitioner has been provided with the opportunity to provide additional documentation to show that the Bureau's calculation of his Idaho income tax liability was incorrect, however, the petitioner has failed to do so. Since the petitioner has not established that the amount of Idaho taxable income set out in the Notice of Deficiency Determination is incorrect or otherwise erroneous, the Tax Commission has no alternative but to affirm the amount of Idaho taxable income shown in the Notice of Deficiency Determination. *See Parsons v. Idaho State Tax Commission*, 110 Idaho 572, 574-575 n.2, 716 P.2d 1344, 1346-1347 n.2 (Ct. App. 1986) (a State Tax Commission deficiency notice is presumed to be correct and the burden is on the taxpayer to show that the deficiency is erroneous).

The Bureau added interest and penalty to the petitioner's return per Idaho Code sections 63-3045 and 63-3046. The Tax Commission reviewed those additions and found them to be in accordance with the Idaho Code.

WHEREFORE, the Notice of Deficiency Determination dated August 17, 2001, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1996	\$3,939	\$985	\$1,823	\$6,747

Interest is calculated through May 15, 2003, and will continue to accrue at the rate set forth in Idaho Code section 63-3045.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioner's rights to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2003.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2003, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]
[Redacted]

Certified Mail No. [Redacted]